

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2003-211-C - ORDER NO. 2003-642
OCTOBER 24, 2003

IN RE: Application of Motion Telecom, Inc. for a)	ORDER
Certificate of Public Convenience and)	GRANTING
Necessity to Resell Long Distance Services)	APPLICATION
and Provide Prepaid Calling Services and for)	
Approval of Transfer of Assets and Customer)	
Base from Univance Telecommunications,)	
Inc.)	

This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of the Application of Motion Telecom, Inc. ("Motion" or "the Company") requesting a Certificate of Public Convenience and Necessity authorizing it to operate in South Carolina as a reseller of interexchange telecommunications services. The Company proposes to offer outbound long distance service, toll free (inbound) long distance service, travel card service, prepaid calling card service, operator service, and directory assistance service. In addition, Motion requests that the Commission approve the transfer of substantially all of the assets of Univance Telecommunications, Inc. ("Univance"), including the customer base of Univance to Motion.

The Company's Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 2002) and the Regulations of the Public Service Commission of South Carolina. By its Application, Motion also requests a waiver of 26 S.C. Code Ann. Regs. 103-610 which requires the Company keep its books and records in the State of South Carolina.

The Commission's Executive Director instructed Motion to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the affected areas. The purpose of the Notice of Filing was to inform interested parties of Motion's Application and of the manner and time in which to file the appropriate pleadings for participation in the proceeding. Motion complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. No Petitions to Intervene or Protests were filed.

A hearing was convened on October 15, 2003, at 11:30 a.m. in the Commission's Hearing Room at 101 Executive Center Drive, Columbia, South Carolina. The Honorable Mignon Clyburn, Chairman, presided. Motion was represented by John J. Pringle, Jr., Esquire. Jocelyn G. Boyd, Staff Counsel, represented the Commission Staff.

Ron Husney, Vice President of Operations for Motion, appeared and testified in support of the Application. The record reveals that Motion is a Colorado corporation which is headquartered in Centennial, California and is registered to conduct business in South Carolina as a foreign corporation. According to Mr. Husney, Motion seeks authority to operate in South Carolina as a switchless, non-facilities based interexchange resale carrier proposing to provide long distance communications services and prepaid calling card services to residential and commercial customers in this state for the transmission of voice, data, and other types of telecommunications. Motion does not intend to install any transmission or switching facilities in South Carolina and will engage in "switchless" resale of services through UUNet (formerly WorldCom Telecommunications). In addition, Motion requests that the Commission approve the

transfer of assets and customer base of Univance in South Carolina to Motion. Motion asserts that the transfer of the customer base will be transparent to the customers and has been noticed to the Federal Communications Commission. This request is based on the purchase by Motion of Univance's assets in U.S. Bankruptcy Court for the District of Colorado. Mr. Husney explained the Company's request for authority, and the record reveals the Company's services, operations, and marketing procedures.

Mr. Husney also testified regarding Motion's technical, financial, and managerial resources to provide the services for which it seeks authority to provide. Finally, Mr. Husney testified that Motion will operate in accordance with Commission rules, regulations, guidelines, and Commission Orders.

Mr. Husney also offered that approval of Motion's Application would serve the public interest by allowing customers to obtain very competitive rates and services, by allowing for current customers of Univance to maintain uninterrupted long distance service, by promoting efficient use of the underlying network, by increasing access revenues for underlying carriers, and by increasing tax revenue for the State of South Carolina.

After full consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

Based on the record in this matter, including the testimony and evidence presented at the hearing in this case on October 15, 2003, the Commission makes the following findings of fact:

1. That Motion is organized as a corporation under the laws of the State of Colorado and is authorized to do business as a foreign corporation in the State of South Carolina by the Secretary of State.

2. That Motion operates as a non-facilities based reseller of interexchange services and wishes to provide its services in South Carolina.

3. That approval of the Application would serve the public interest to allow Motion to assume the assets and customer base of Univance in South Carolina under the provisions provided for in this Order as such a transfer would provide the affected customers with uninterrupted long distance telephone service at their current rates.

4. That based on the evidence in the record and the testimony and evidence submitted by the Company at the hearing in this matter, Motion has the requisite experience, capability, and financial resources to provide the services as described in its Application including long distance telephone service and prepaid calling cards.

5. That Motion be required to notify this Commission of the completion of the transfer of assets and customers from Univance to Motion, which is authorized by this Order, in order to allow the Commission to act to cancel the Certificate of Authority currently held by Univance in South Carolina.

6. That as a condition to authorizing Motion to offer prepaid calling cards in South Carolina that Motion should be required to post a bond with the Commission in the amount of \$5,000.00 in the form of a Certificate of Deposit or Surety Bond.

CONCLUSIONS OF LAW

Based on the aforesated Findings of Fact, the applicable statutes and Commission Regulations, the Commission concludes as a matter of law:

1. That a Certificate of Public Convenience and Necessity should be granted to Motion to provide intrastate interLATA service and to originate and terminate toll traffic within the same LATA, as set forth herein, through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), Foreign Exchange Service, Private Line Service, 800 inbound service, intraLATA direct dialed services, prepaid calling card or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. That we adopt a rate design for Motion for its resale of residential services which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

3. That Motion may not adjust its rates below the approved maximum level without notice to the Commission and to the public. Motion shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the

Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 2002).

4. That if it has not already done so by the date of issuance of this Order, Motion shall file its revised tariff and an accompanying price list within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

5. Motion is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers and facilities-based interexchange carriers should be treated similarly.

6. With regard to the Company's resale of services, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

7. Motion shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If Motion changes underlying carriers, it shall notify the Commission in writing.

8. With regard to the origination and termination of toll calls within the same LATA, Motion shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX inter-LATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the FCC pursuant to the Telecommunications Act of 1996 (47 CFR 51.209). Motion shall comply with the imputation standard as adopted by Order No. 93-462 and more fully described in paragraph 4 of the Stipulation and Appendix B approved by Order No. 93-462.

9. As a condition of offering prepaid calling cards, Motion shall be required to post a surety bond or certificate of deposit in the amount of \$5,000.00 with this Commission prior to their offering such services in South Carolina. This requirement shall be reviewed on an annual basis.

10. Motion shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipts reports will necessitate the filing of intrastate information. Therefore, Motion shall keep financial records on an intrastate basis for South Carolina in order to comply with the Commission's requirements of filing an annual report and a gross receipts report. The proper form for filing annual financial information can be found on the Commission's website at www.psc.state.sc.us/forms. The title of this form is "Annual Information on South Carolina Operations for Interexchange Companies and AOS" and the proper form may be found under one of the links entitled "Annual Report." The Company shall file the annual report form with the Commission by April 1st of each

year. Commission gross receipts forms are due to be filed with the Commission no later than August 31st of each year. The appropriate form for remitting information for gross receipts is entitled “Gross Receipts Form for Utility Companies” and may also be found on the Commission’s website.

11. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. Motion shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The “Authorized Utility Representative Information” form can be found at the Commission’s website www.psc.state.sc.us/forms; this form shall be utilized for the provision of this information to the Commission. Further, the Company shall promptly notify the Commission in writing if the representatives are replaced.

12. The Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.


13. Motion additionally requests a waiver of Reg. 103-610, which requires that records required by the Commission’s Rules and Regulations be maintained in South Carolina. The record reveals that Motion’s principal headquarters is located in Centennial, Colorado, and Motion requests permission to maintain its books and records

at its headquarters in that city and state. The Commission finds Motion's requested waiver reasonable and understands the difficulty presented to Motion should the waiver not be granted. The Commission therefore grants the requested waiver that Motion be allowed to maintain its books and records at its principal headquarters. However, Motion shall make available its books and records at all reasonable times upon request by the Commission or the Commission Staff, and shall promptly notify the Commission if the location of its books and records changes.

14. We conclude that it is in the best interests of the public, and in particular the current customers of Univance, that Motion be permitted to acquire and operate the assets of Univance, including Univance's customer base in South Carolina, and that sufficient notice of the transfer has been provided to those customers to the satisfaction of this Commission.


15. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Mignon L. Clyburn, Chairman

ATTEST:



Bruce F. Duke, Acting Executive Director

(SEAL)